

Fair Housing Rental Testing Report

Fairfax County Human
Rights Commission
June 1999

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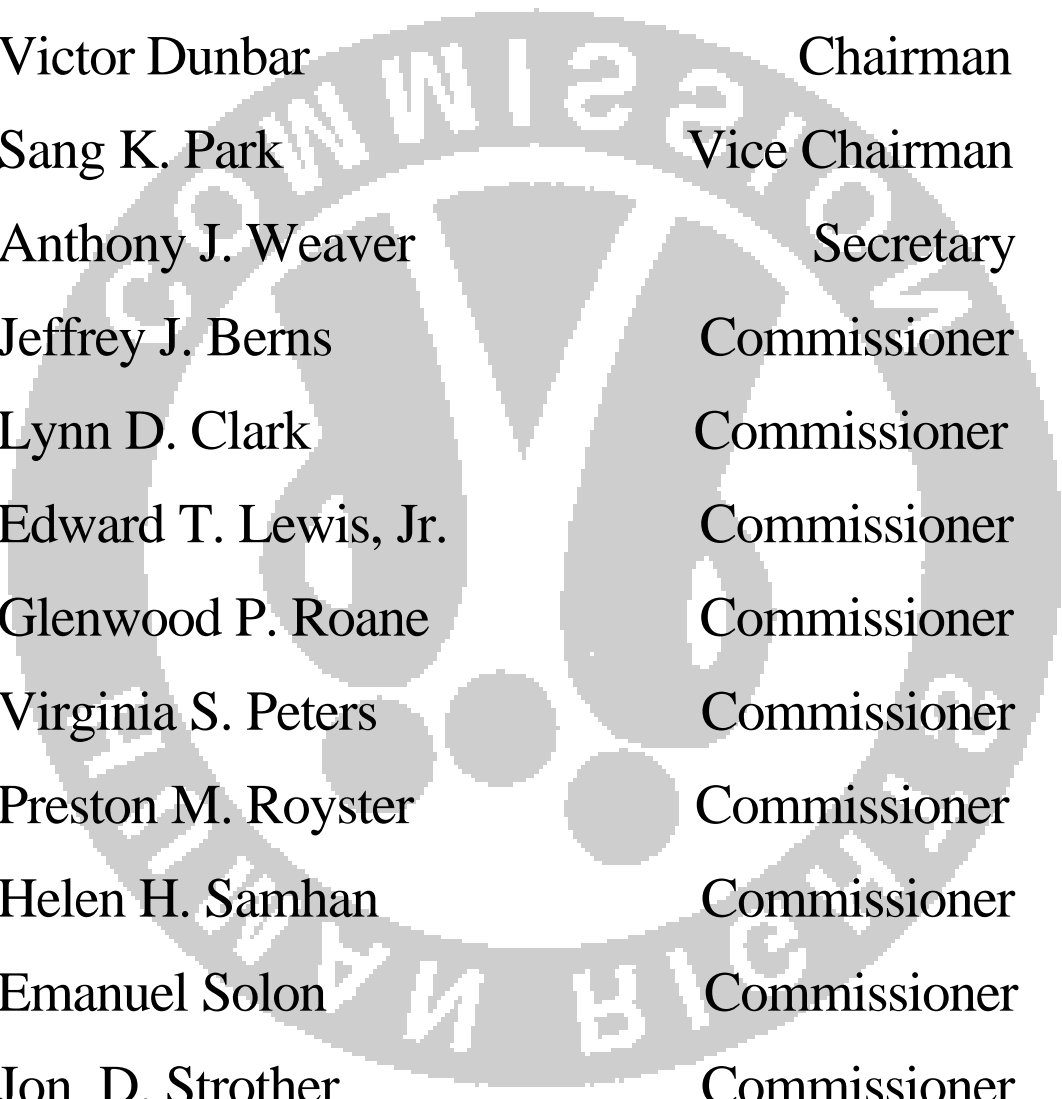
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Table of Contents

Topic	page
Acknowledgements	5
Executive Summary.....	6
Background	9
Fair Housing Testing	12
Methodology for Choosing Complexes for Testing	13
Fairfax County Human Rights Ordinance	15
Theories of Discrimination	16
Evaluation of Test Results	19
Results - Race	22
Results - National Origin	28
Results - Familial Status	36
Results - Disability.....	43

Acknowledgements:

The Fairfax County Human Rights Commission would like to thank the following organizations for their valuable assistance in conducting fair housing rental tests.

Fairfax Area Disability Services Board

conducted disabilities tests and coordinated information, training and results with the Human Rights Commission.

Greater Washington Fair Housing Council

selected as our testing contractor for race, national origin and familial status tests.

Northern Virginia Planning District Commission

coordinated and solicited requests for proposals and negotiated contracts with testing vendors and coordinated with all other Northern Virginia Jurisdictions.

Executive Summary

- The *Fairfax County 1998 Rental Housing Complex Census Analysis* reports a total of 53,734 rental complex housing units in Fairfax County.
- Complexes that were tested control 48,682 rental complex housing units (90.5%) in Fairfax County
- 157 Fair Housing Tests were conducted between November 23, 1998 and March 15, 1999.
 - 50 tests for evidence of discrimination due to race.
 - 50 tests for evidence of discrimination due to national origin.
 - 32 tests for evidence of discrimination against persons with disabilities.
 - 25 tests for evidence of discrimination against families with children.
- 61 of 157 tests showed no evidence of discrimination.
- 56 of 157 tests showed evidence of possible discrimination for which there could be a legal reason.

- 40 of 157 tests showed evidence of discrimination.
- In addition to the above results, 11 tests also showed technical violations of the Fairfax Human Rights Ordinance provision that prohibits asking for information about race, color, national origin, sex, religion, disability, marital status or familial status on an application for rental or sale of property.

These results are not considered statistically significant. In order to be statistically significant, testing of a minimum of 144 complexes with more than 50 units for discrimination against only one protected class is required. We elected not to take this approach since we wanted to gather information on more than one protected class. We felt the need to test more protected classes primarily due to previous rental testing results and interest expressed by several constituent groups. As a result, the information in this report cannot be used to show any trends or overall discriminatory patterns in the County. This report shows that we did find evidence of discrimination in the rental housing market in Fairfax County in all of the protected classes tested. This report can now serve as a baseline for future reports.

The only conclusion the Commission draws from this report, besides the evidence of discrimination described herein, is that the method of paired testing indicates evidence of discrimination that is greater than that indicated by the history of fair housing complaints received by the Commission. We believe this to be the case because applicants for housing units typically do not know that they are being treated unequally when it occurs.

Background

On April 28, 1997, the Fairfax County Board of Supervisors appropriated funds for a fair housing testing program. On June 23, 1997, the Fairfax County Board of Supervisors adopted an Analysis of Impediments to Fair Housing Choice in Fairfax County. The Board of Supervisors decided that the Fairfax County Human Rights Commission should take primary responsibility for addressing the identified impediments, including: lack of availability of discrimination data; need for education and outreach, and lack of housing opportunities for families with children and persons with disabilities.

The Northern Virginia Planning District Commission then certified three fair housing testing contractors. The Human Rights Commission selected the lowest bidder, the Fair Housing Council of Greater Washington to conduct 125 fair housing rental tests. These tests were conducted on the basis of race, national origin and familial status (presence of children in household).

The Fairfax Area Disabilities Services Board joined with the Human Rights Commission in conducting 32 tests for housing discrimination against persons with

disabilities. The disabilities of the testers were either obvious or revealed to the rental agents during the testing. The tests done by the Disability Services Board were coordinated with the Human Rights Commission.

The Fairfax County Department of Management and Budget publishes an annual *Rental Housing Complex Census Analysis*. This document provided valuable information such as listing rental complexes located in Fairfax County, listing the number of units in each complex and listing the date each complex was first occupied. This information was used in selecting complexes for testing.

The Human Rights Commission also formed a Fair Housing Task Force composed of stakeholders from the housing industry, community associations, public officials and nonprofit groups. Members include the Northern Virginia Association of Realtors, the Northern Virginia Apartment Association, Fairfax Area Disability Services Board, Office of Housing and Community Development, Community Association Institute, The Fair Housing Center of Northern Virginia, the Community Services Board, Kurdish Human Rights Watch, Pathway Homes, Center for Housing Counseling, Center for Multicultural Human Services, Northern Virginia

Family Services, Legal Services of Northern Virginia and interested citizens. This Task Force recommends that Fairfax County conduct fair housing testing on an ongoing basis.

Fair Housing Testing

The United States Supreme Court has upheld fair housing testing as a tool to determine whether laws barring discrimination in housing are being violated.¹ The basic elements of a fair housing test involve two testers visiting the same apartment complex on the same day. The testers were matched by date, type of unit requested, income, age, gender and employment history. The testers differ only in the protected class for which the test was conducted. Tester pairs never differ in more than one protected characteristic (race, gender, national origin, familial status, or disability).

Testers were sent to the same complex on the same day usually 2 to 3 hours apart. The testers asked for the same type of unit and expressed a desire to move in within the same time frame (as soon as possible, next thirty days, etc.). Testers represented themselves as having the same type of employment background and income. In familial status tests, one of the testers stated that he was looking for a two-bedroom unit for himself, his spouse and their two young daughters. The other tester stated that he was looking for a two-bedroom unit for himself and his

¹ *Haven's Realty Corporation v. Coleman*, 455 U.S. 363 (1982).

spouse. Children were not present during familial status tests.

Testers were trained by fair housing professionals in testing and reporting techniques and fair housing law. To preserve the integrity of the tests, testers have not been told about the experiences of the other tester at complexes they visited.

In this study, rental complexes were tested on the bases of race (50 tests), national origin (Hispanic) (50 tests), disability (32 tests) and familial status (25 tests). These bases were chosen as a result of prior complaint history, anecdotal evidence and previous testing evidence indicating discrimination against these protected classes.

Methodology for Choosing Complexes for Testing

Complexes were chosen to maximize the coverage of the rental market in Fairfax County both in terms of complexes and management companies. Complexes with fewer than 25 units were not tested due to a low probability of vacancies since the vacancy rate in Fairfax County is 5.5%.² The Commission's objective was to cover as many units as possible

² 1998 *Fairfax County Rental Complex Census Analysis*, Fairfax County Office of Management and Budget.

within budget restrictions. Therefore, the Commission targeted complexes with 25 or more units to reach at least 90% of the market.

Complexes were chosen from the “*Fairfax County Rental Housing Complex Analysis*” published by the Fairfax County Department of Management and Budget. Sites were selected for testing according to their number of units, the number of properties managed by one company, the need to test for multiple bases where one company manages multiple properties. In addition there was need to include properties covered by federal accessibility requirements applying to buildings first occupied after March 13, 1991, in tests on the basis of disability.

A total of 157 complexes were tested for housing discrimination. This represents approximately 82% of the apartment complexes with more than 25 units in Fairfax County. These complexes control over 90% of rental complex housing units in Fairfax County.

Fairfax County Human Rights Ordinance

The Fairfax County Human Rights Ordinance requires that housing providers provide equal housing opportunity to all county residents and prospective residents. This prohibits differences in treatment based on:

- Race**
- Color**
- National Origin**
- Religion**
- Sex**
- Age**
- Disability**
- Familial Status**
- Marital Status**

The Human Rights Ordinance protects all persons including members of majority groups. The Human Rights Ordinance also specifically prohibits applications which solicit information on age, race, color, religion, sex, national origin, marital status, disability or familial status. With respect to marital

status this does not preclude questions regarding income on a joint application.

The Human Rights Ordinance also specifically prohibits a landlord from providing false information about available housing.

The Human Rights Ordinance also prohibits encouraging people to rent based on comments about whether the property is or is likely to be owned, used or occupied by a person or persons of a particular age, race, color, religion, sex, national origin, marital status, disability or familial status. This practice is referred to as “steering.”

Theories of Discrimination

Fair housing instances of discrimination generally fall under one of three theories of discrimination. A particular test may show evidence of discrimination under one, two, or all three of these theories.

- **Unequal Treatment** - If a housing provider treats people differently because of their race, color, national origin, religion, sex, age, disability, familial status or marital status this is evidence of unequal treatment. Fair housing testing is designed to look for unequal treatment. This is the most common type of evidence revealed by fair housing testing.
- **Overt Actions** - Actions which are obviously discriminatory are classified as “overt actions.” Overt actions include racial or ethnic slurs. Operating an architecturally inaccessible complex first occupied after March 13, 1991 is also considered an overt action.
- **Adverse Impact** - Some housing providers have seemingly neutral policies, practices or procedures that disproportionately limit the ability of some protected classes to obtain housing. People are

treated alike but the effect of the policy, practice or procedure on members of a protected class is significantly more harmful. An example of this is requiring a driver's license to view an apartment. Blind people do not have driver's licenses.

- **Denial of Reasonable Accommodation** - This is an exception to the general requirement of equal treatment. In certain situations a housing provider is required to treat persons differently by making reasonable accommodations for religious practices or disabilities. If a person requests an accommodation and the request is reasonable, a housing provider must either grant the request or propose an alternate accommodation that would allow the tenant full use of available housing. Housing providers can require tenants to pay the cost of reasonable modifications. Because reasonable accommodations must be requested and considered, they were not the subjects of these fair housing tests. However, Disability Services Board testers noted several complexes in which disabled tenants would require accommodations to live.

Evaluation of Test Results

Fair Housing tests results were reviewed by a team of professional staff at the Fairfax Human Rights Commission. This review classified results into the following five categories.

Category One:

Tests showing no difference in treatment were listed as category one. No further review of these tests was necessary.

Category Two:

Tests with a difference in treatment that appeared to be nondiscriminatory were listed as category two. Also, tests that included complexes that would require reasonable accommodations for tenants with certain disabilities to make full use of the complex were included in this category.

Category Three:

Tests with a difference in treatment that possibly could be discriminatory or had a possible adverse impact on a protected class were listed as category three. These tests show evidence of discriminatory actions but did not foreclose the possibility of a legitimate, nondiscriminatory reason for the

evidence. If professional reviewing staff could imagine any plausible, nondiscriminatory reason for the difference in treatment, the test was listed as a category three result. Further investigation would be needed to determine if such a legitimate, nondiscriminatory reason exists.

Category Four:

Tests, which in the collective opinion of professional reviewing staff, presented evidence from which reasonable persons would conclude that the reported actions of the rental agent constituted discrimination are classified as category four. If for any test result, any of the reviewing staff members could produce a plausible nondiscriminatory reason for the conduct, the test result was not listed in category four. Also, all tests which presented evidence of overt actions of discrimination such as asking for race on the rental application, are classified as category four.

Category Five:

Tests which show a technical violation of the Fairfax Human Rights Ordinance prohibition on soliciting information about applicants race, color, national origin, sex, religion, disability, marital status or familial status were classified as category five. This includes tests in which the application requests a photograph or personal description. All tests that

show a category five classification will also show one of the categories above reflecting the treatment of the testers.

Results Race - 50 Tests Conducted*

Categories One and Two

- 17 of 50 race tests showed no evidence of unequal treatment.

Category Three

- 22 of 50 race tests showed possible evidence of unequal treatment.
 - 9 tests showed possible preferential treatment towards the White tester.
 - 11 tests showed possible preferential treatment towards the Black tester.
 - 2 tests showed different forms of preferential treatment toward each tester. For example one tester may be told of more available units and the other tester may be offered a discount on the application fee.

*Results equal more than 50 because more than one type of potentially discriminatory actions or violations of the Human Rights Ordinance were discovered in some tests.

Category Four

- 11 of 50 of race tests showed evidence of unequal treatment or overt actions of discrimination.
 - 6 tests showed evidence of unequal treatment in favor of the White tester.
 - 5 tests showed evidence of unequal treatment in favor of the Black tester.

Category Five

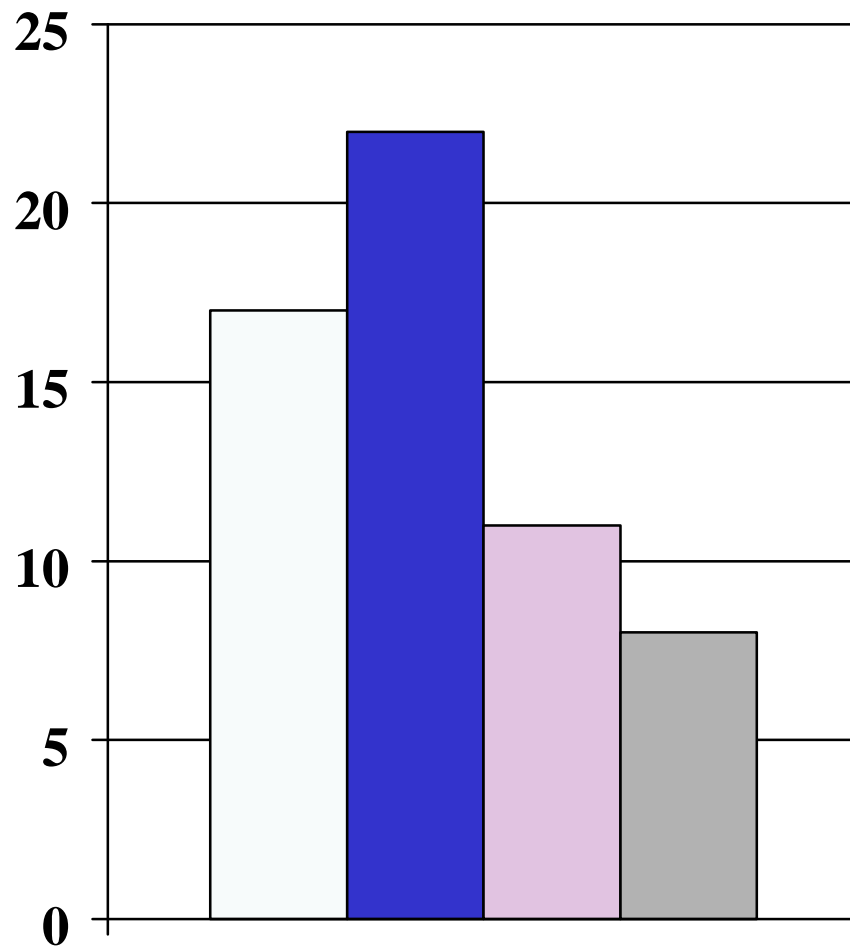
- 8 of 50 tests showed other evidence violating the Fairfax County Human Rights Ordinance. The preferred tester is not known.

Note: 3 complexes not tested for race asked for race or a photograph on their applications.

Results - Race Tests

All Tests

(50 Tests Total)*



<input type="checkbox"/> No Evidence	17
<input checked="" type="checkbox"/> Category Three	22
<input type="checkbox"/> Category Four	11
<input type="checkbox"/> Category Five	8

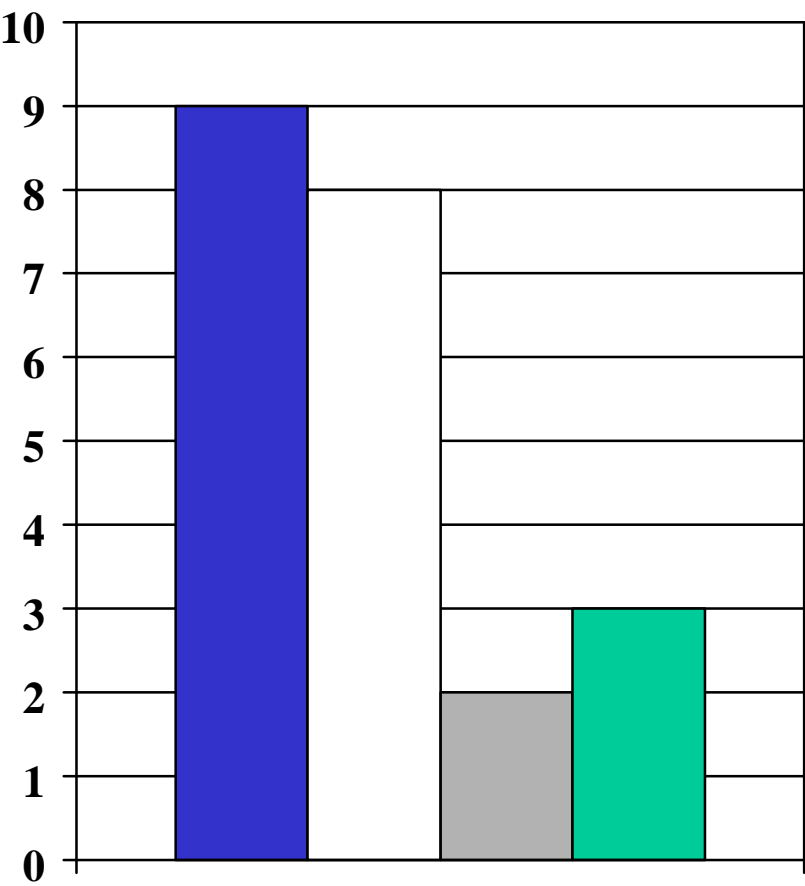
*Results equal more than 50 because more than one type of potentially discriminatory actions or violations of the Human Rights Ordinance were discovered in some tests.

Results - Race Tests

Category Three

Tester Favored

(50 Tests)



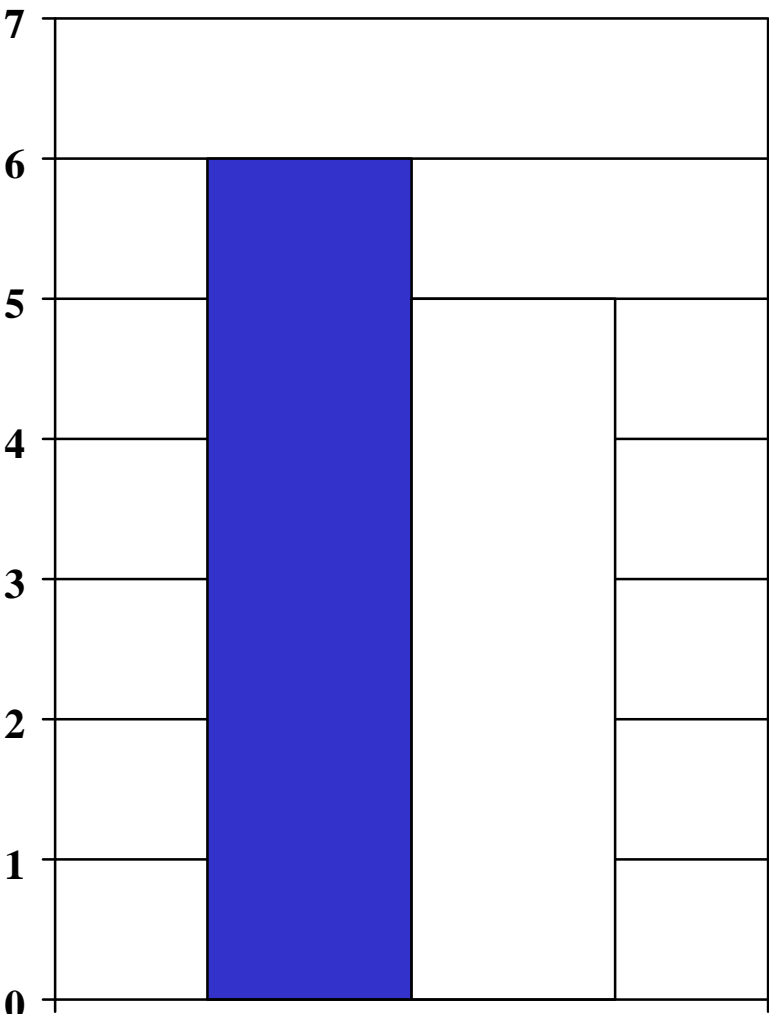
■ White Tester Favored	9
□ Black Tester Favored	8
■ Some Actions Favor Each Tester	2
■ Unknown	3

Results - Race Tests

Category Four

Tester Favored

(50 Tests)



<div></div> White Tester Favored	6
<div></div> Black Tester Favored	5

Types of Potentially Discriminatory Actions

Race Tests

- 11 of 50 complexes informed one tester of available units and did not inform the other tester.
 - 6 complexes told the White tester about more available units than the Black tester.
 - 5 complexes told the Black tester about more available units than the White tester.
- 9 of 50 complexes showed more units to only one tester.
 - 5 complexes showed more units to the White tester than to the Black tester.
 - 4 complexes showed more units to the Black tester than to the White tester.
- 4 of 50 complexes offered a discount or special offer to only one tester.
 - 2 complexes made special offers only to the White tester.
 - 2 complexes made special offers only to the Black tester.

- 4 of 50 complexes suggested other complexes for the Black tester but not the white tester. (Steering)
- 3 of 50 complexes gave an application to only one tester.
 - 2 complexes gave an application only to the Black Tester
 - 1 complex gave an application only to the White Tester.
- 3 of 50 complexes gave a lower price to the Black tester.
- 2 of 50 complexes offered only one tester a place on the waiting list.
 - 1 complex offered a place on the waiting list to only the white tester.
 - 1 complex offered a place on the waiting list to only the black tester.

Results - National Origin 50 Tests Conducted*

Categories One and Two

- 10 of 50 National Origin tests showed no evidence of unequal treatment.

Category Three

- 22 of 50 National Origin tests showed possible evidence of unequal treatment or potential adverse impact.
 - 11 tests showed possible preferential treatment towards the Non-Hispanic tester.
 - 8 tests showed possible preferential treatment towards the Hispanic tester.
 - 2 tests showed possible preferential, but different treatment toward each tester.
 - 1 test requested information on citizenship. The preferred tester is unknown.

*Results equal more than 50 because more than one type of potentially discriminatory actions or violations of the Human Rights Ordinance were discovered in some tests.

Category Four

- 18 of 50 national origin tests showed evidence of unequal treatment or overt actions of discrimination.
 - 17 tests showed preferential treatment towards the Non-Hispanic tester.
 - 1 test showed different forms of preferential treatment toward each tester.

Category Five

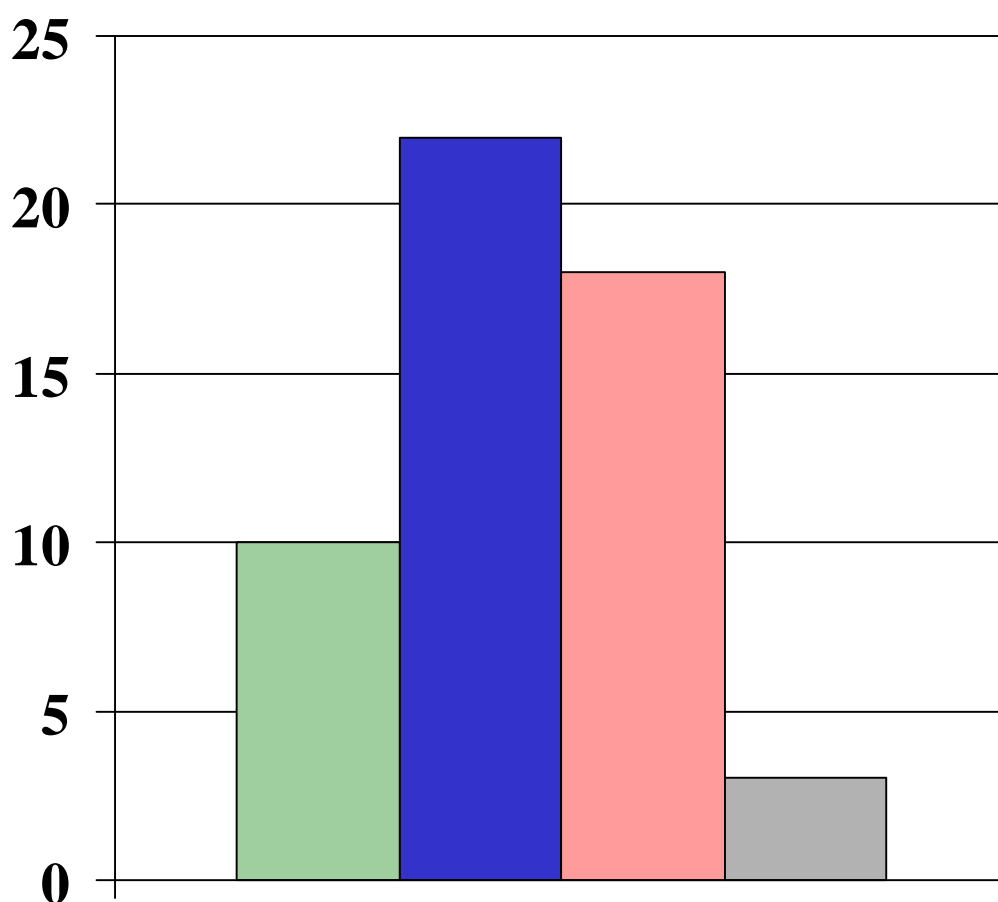
- 3 of 50 tests showed other evidence violating the Fairfax County Human Rights Ordinance.
 - 1 test showed an application that requested a copy of an identification card with a photograph.
 - 2 tests showed applications with restriction on the basis of familial status or disability.

Note: 11 complexes not tested for national origin requested information about national origin or citizenship on their applications.

Results - National Origin

All Tests

(50 Total Tests)*



■ No Evidence	10
■ Category Three	22
■ Category Four	18
■ Category Five	3

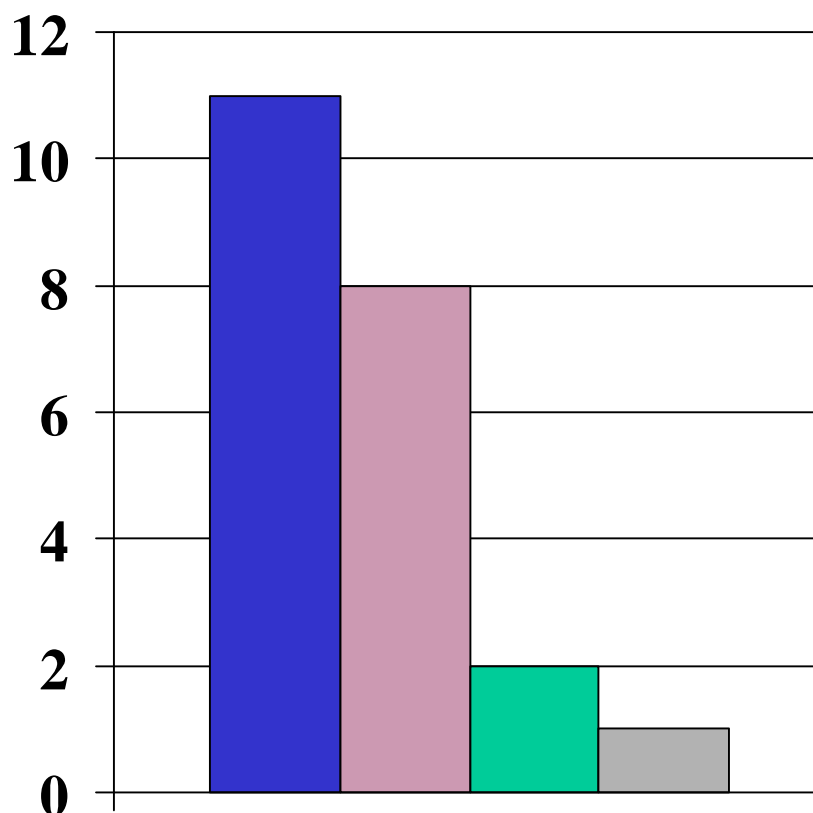
*Results equal more than 50 because more than one type of potentially discriminatory actions or violations of the Human Rights Ordinance were discovered in some tests.

Results - National Origin

Category Three

Tester Favored

(50 Total Tests)



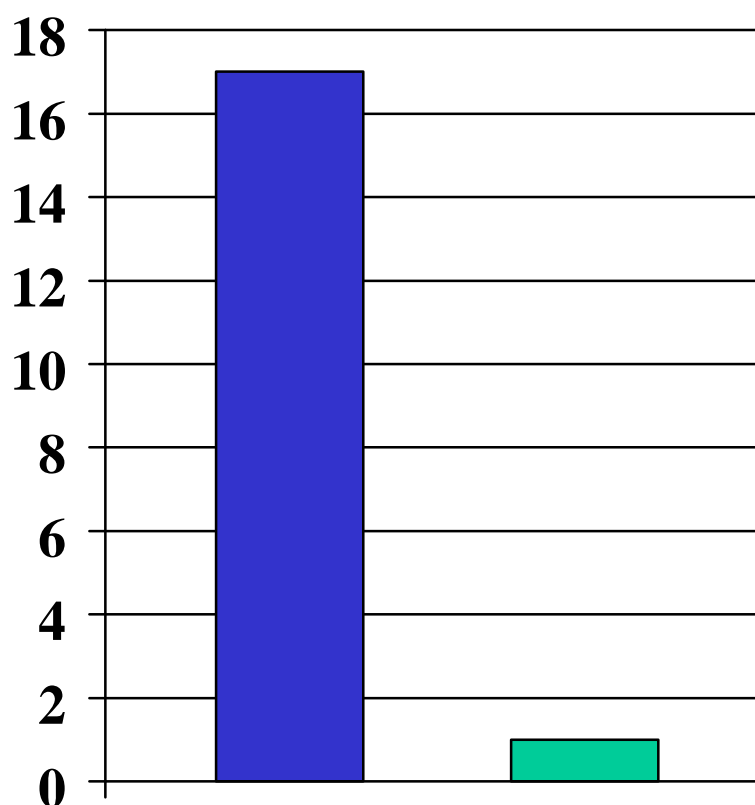
■ Non-Hispanic Tester Favored	11
■ Hispanic Tester Favored	8
■ Some Actions Favoring Each Tester	2
■ Favored Tester Unknown	1

Results - National Origin

Category Four

Tester Favored

(50 Total Tests)



■ Non-Hispanic Tester Favored	17
■ Hispanic Tester Favored	0
■ Some Actions Favoring Each Tester	1

Types of Potentially Discriminatory Actions- National Origin

- 24 of 50 complexes informed one tester of available units and did not inform the other tester.
 - 16 complexes told the Non-Hispanic tester about more available units than the Hispanic tester.
 - 8 complexes told the Hispanic tester about more available units than the Non-Hispanic tester.
- 12 of 50 complexes showed models or units to only one tester.
 - 9 complexes showed more units to the Non-Hispanic tester than to the Hispanic tester.
 - 3 complexes showed more units to the Hispanic tester than to the Non-Hispanic tester.
- 8 of 50 complexes offered a discount or special offer to only the Non-Hispanic tester.

- 3 of 50 complexes had applications that requested information about nationality or citizenship or a photograph.
- 2 of 50 complexes quoted Hispanic testers a higher rent than Non-Hispanic testers for the same unit.

Results - Familial Status 25 Tests Conducted*

Categories One and Two

- 8 of 25 familial status tests showed no evidence of unequal treatment.

Category Three

- 12 of 25 familial status tests showed possible evidence of unequal treatment.
 - 5 tests showed possible preferential treatment towards families without children.
 - 5 tests showed possible preferential treatment towards families with children
 - 2 tests showed different forms of preferential treatment toward each tester.

Category Four

- 5 of 25 familial status tests showed evidence of unequal treatment.

*Results equal more than 25 because more than one type of potentially discriminatory actions or violations of the Human Rights Ordinance were discovered in some tests.

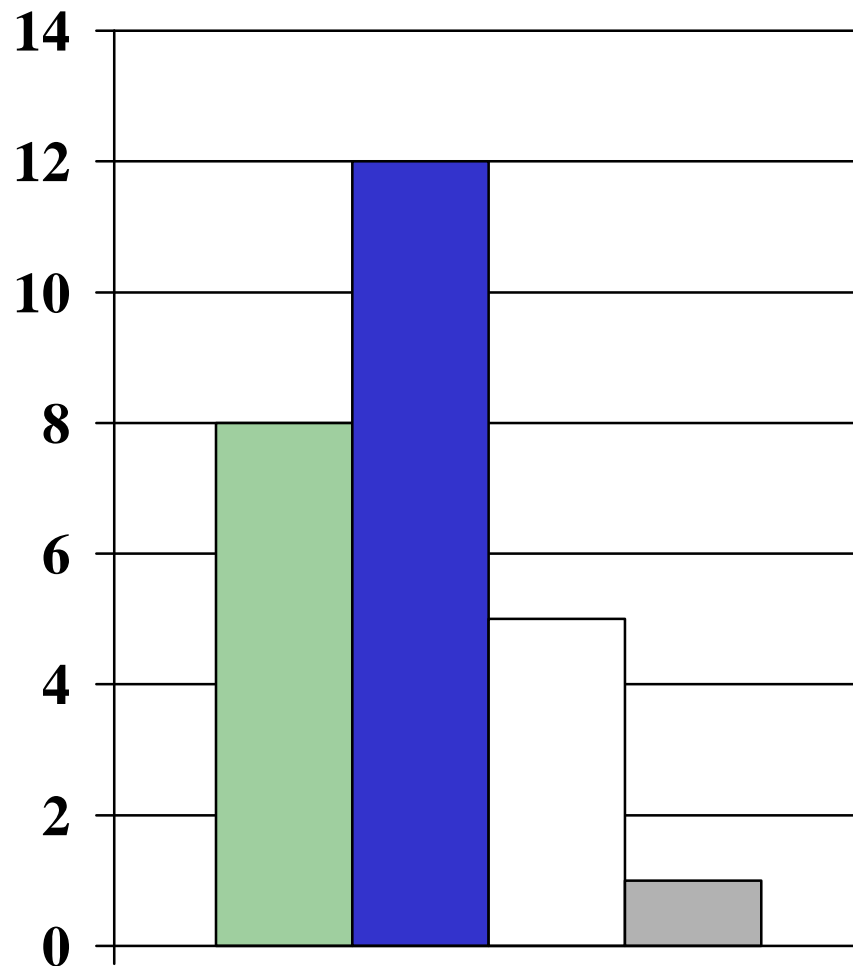
- 4 tests showed preferential treatment towards families without children.
- 1 test showed preferential treatment toward families with children.

Category Five

- 1 of 25 tests asked for a photo ID with the application.

Note: 2 Complexes not tested for familial status stated restrictions on children on their applications.

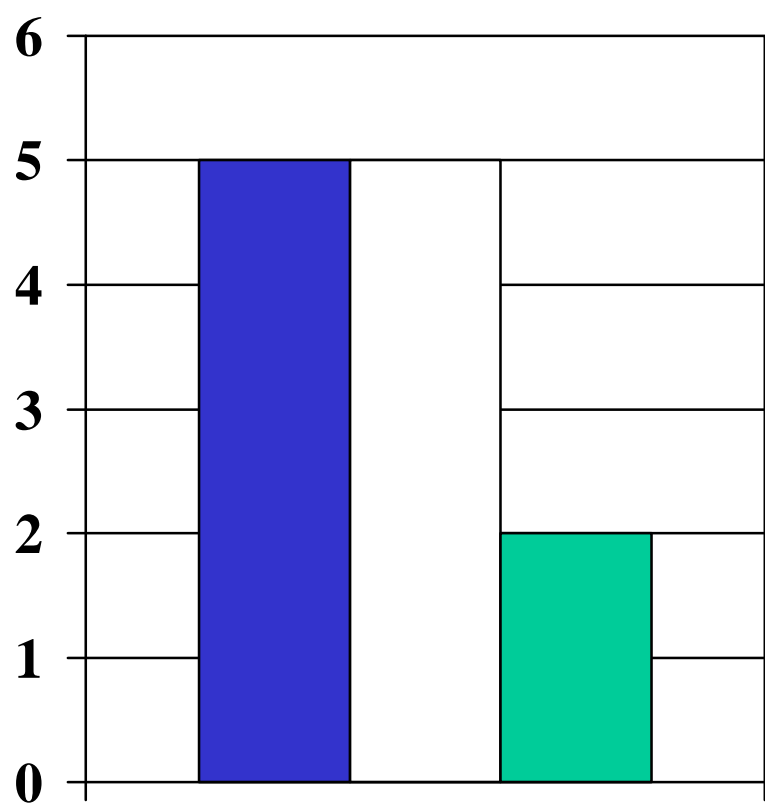
Results - Familial Status (25 Total Tests)*



■ No Evidence	8
■ Category Three	12
■ Category Four	5
■ Category Five	1

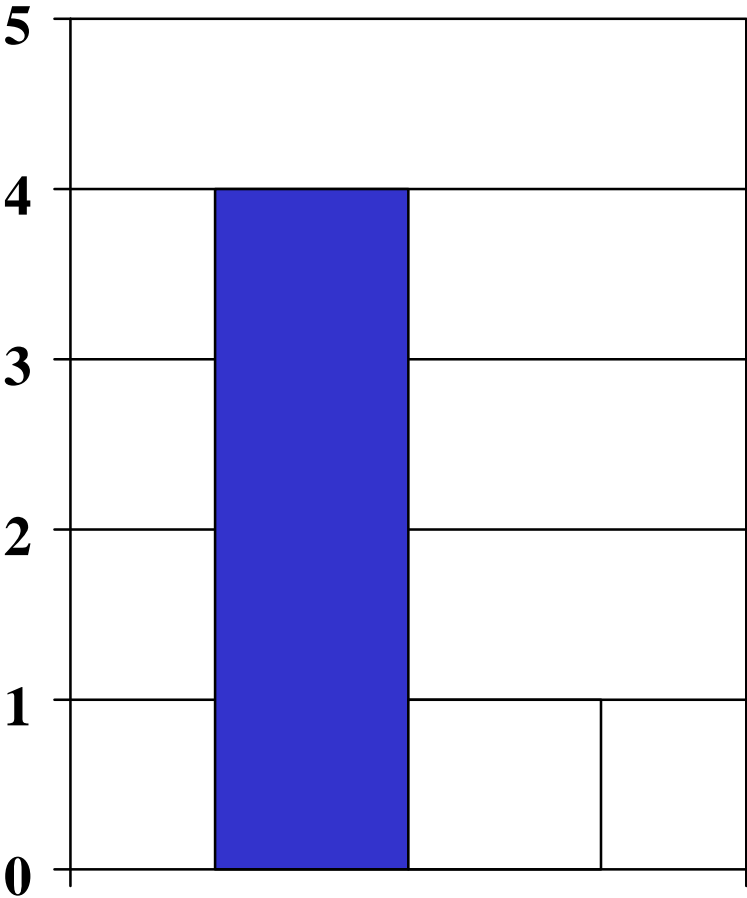
*Results equal more than 25 because more than one type of potentially discriminatory actions or violations of the Human Rights Ordinance were discovered in some tests.

Results - Familial Status **Category Three** **Tester Favored** **(25 Total Tests)**



<div></div> Tester Without Children Favored	5
<div></div> Tester With Children Favored	5
<div></div> Some Evidence Favors Each Tester	2

Results - Familial Status **Category Four** **Tester Favored** **(25 Total Tests)**



<div></div> Tester Without Children Favored	4
<div></div> Tester With Children Favored	1

Types of Potentially Discriminatory Treatment

Familial Status

- 10 of 25 complexes informed one tester of available units and did not inform the other tester.
 - 4 complexes told the tester without children about more available units than the tester with children.
 - 6 complexes told the tester with children about more available units than the tester without children.
- 3 of 25 complexes showed models or units to only one tester.
 - 1 complex showed more units to the tester without children than to the tester with children.
 - 2 complexes showed more units to the tester with children than to the tester without children.

- 4 of 25 Complexes made a special offer only to one tester.
 - 3 complexes offered a discount or special offer to only the tester without children.
 - 1 complex made special offers only to the tester with children.

Results - Disability

32 Total Tests*

Categories One and Two

- 26 of 32 disability tests showed no evidence of unequal treatment.

Category Three

- No disability tests results were listed in this category

Category Four

- 6 of 32 Disability Tests showed evidence of unequal treatment.
 - 2 complexes were not accessible to disabled persons.
 - 2 complexes showed preferential treatment to the non-disabled tester.

*Results equal more than 32 because more than one type of potentially discriminatory actions or violations of the Human Rights Ordinance were discovered in some tests.

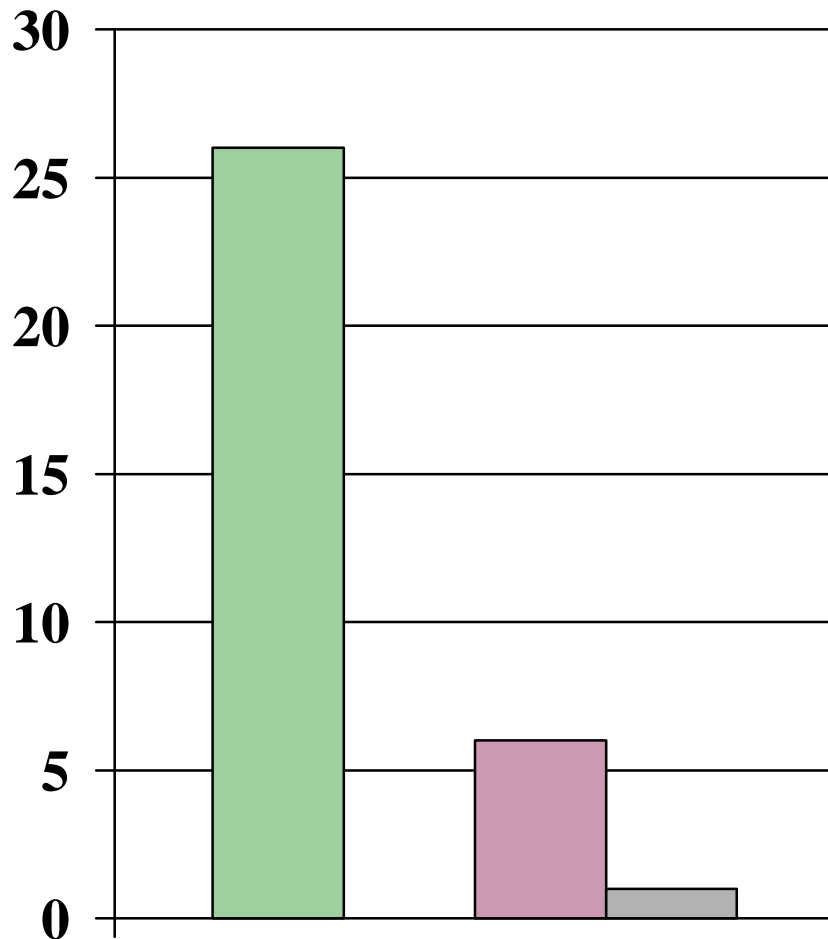
- 2 complexes had applications with restrictions for service animals or requiring persons to identify if they had certain disabilities.

Category Five

- 1 of 32 Disability Tests showed an application requesting race and national origin.

Note: Nine complexes not tested for disability had questions about disabilities on their applications or had specified limitations for persons with certain disabilities on their applications.

Results - Disability (32 Total Tests)*



■ No Evidence	26
■ Catgry Three	0
■ Category Four	6
■ Category Five	1

*Results equal more than 32 because more than one type of potentially discriminatory actions or violations of the Human Rights Ordinance were discovered in some tests.